

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

KIMBERLY REGENESIS, LLC
and DAMASCUS TRADING
COMPANY, LLC,

Plaintiffs,

v.

Case No: 2:19-cv-538-SPC-NPM

LEE COUNTY,

Defendant.

_____ /

OPINION AND ORDER¹

Before the Court is Defendant Lee County and non-party Commissioners' Motion to Stay Depositions Pending Appeal ([Doc. 110](#)), along with Plaintiffs' response in opposition ([Doc. 113](#)). The Court grants the motion for the below reasons.

About six weeks ago, United States Magistrate Judge Nicholas P. Mizell denied in part Defendant's motion for protective order and to quash notices and a subpoena for deposition. ([Doc. 101](#)). Defendant objected to Judge Mizell's order, which the undersigned mostly overruled. ([Doc. 108](#)). Defendant

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now appeals to the Eleventh Circuit to stop the depositions of certain members of its Board of County Commissioners. (Doc. 109). In doing so, Defendant simultaneously moves to stay the depositions pending the appeal under Rule 8(a) of the Federal Rules of Appellate Procedure.

Rule 8(a) allows a party to move the district court to stay an order pending appeal. See Fed. R. App. P. 8(a). In deciding whether to stay proceedings, a court generally weighs four factors: “(1) whether the stay applicant had made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Nken v. Holder*, 556 U.S. 418, 434 (2009). A court has discretion in exercising the stay, and the decision to do so depends “upon the circumstances of the particular case.” *Id.*

After considering the parties’ arguments, record, and applicable law, the Court will exercise its discretion to stay the remaining depositions. The Court does so because of the specific facts and issues of law presented here. What’s more, because the now-stayed depositions appear central to Plaintiffs’ claims, the Court directs the parties to show cause why the entire case should not be stayed pending Defendant’s appeal.

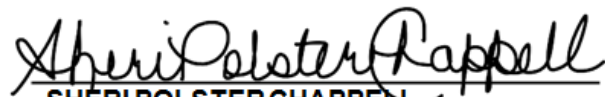
Accordingly, it is now

ORDERED:

Defendant Lee County and non-party Commissioners' Motion to Stay Depositions Pending Appeal ([Doc. 110](#)) is **GRANTED**.

1. The Court **STAYS** the November 15, 2021 deadline to depose the Commissioners and complete discovery until after the Eleventh Circuit resolves Defendant's appeal.
2. On or before **November 12, 2021**, the parties must each file a legal memorandum, not to exceed three (3) pages in length, on whether the Court should stay this case in its entirety pending Defendant's appeal.

DONE and **ORDERED** in Fort Myers, Florida on November 8, 2021.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record